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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2274/2013*, **

Communication submitted by:	Seyma Türkan (not represented by counsel)
Alleged victim:	The author
State party:	Turkey
Date of communication:	26 June 2012 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 19 July 2013 (not issued in document form)
Date of adoption of Views:	17 July 2018
Subject matter:	Refusal of university admission to the author who was wearing a wig substituting for a headscarf
Procedural issue:	Lack of substantiation of the claims
Substantive issues:	Lack of effective remedies; gender discrimination; fair trial; freedom of religion; taking part in conduct of public affairs
Articles of the Covenant:	2, 3, 14, 18, 25 and 26
Articles of the Optional Protocol:	2 and 3

1. The author of the communication is Seyma Türkan, a national of Turkey born in 1987. She claims that Turkey has violated her rights under articles 2, 3, 14, 18, 25 and 26 of the Covenant. The Optional Protocol entered into force for Turkey on 24 February 2007. The author is not represented by counsel.

Factual background

2.1 The author is a Muslim woman who wears a headscarf covering her hair and neck, in line with her religious beliefs. In 2006, she successfully passed the Student Selection and Placement Examination after which high school graduates are assigned to university

* Adopted by the Committee at its 123rd session (2–27 July 2018).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

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according to their performance. She became eligible to enrol in the School of Economics and Administrative Sciences of Kahramanmaraş Sütçü İmam University. The author took the Student Selection and Placement Examination wearing a wig to cover her hair. Although doing so made her feel belittled and uncomfortable, she did not have a choice, as the examination rules prevent students wearing headscarves from entering the examination room.

2.2 On 9 May 2006, the author paid her tuition fees and travelled to the University for registration. She used a wig again. Two different school officers refused to register her as a student, on the ground that the President of the University had given instructions not to register students wearing wigs and because she refused to remove it. The author emphasizes that she had the exact same appearance then as when she was allowed to attend the Student Selection and Placement Examination, with her neck uncovered but her hair hidden under the wig. Her request to see the head of the Registrar's Office was denied.

2.3 On 7 September 2006, the school refused the request of the author's father to register his daughter, stating that higher education students had to comply with legal regulations based on decisions made by higher courts relating to appearance. Following an offer by the University to reimburse her tuition fees, on 4 October 2006 the author sent a letter to the University refusing to be reimbursed and requesting to be registered as a student instead.

2.4 On 21 October 2006, the author filed a complaint before the Second Administrative Court of Gaziantep. She also requested a stay of execution of the University's administrative order. She argued that no statutory provision explicitly prohibited wearing a wig, and that the oral order given by the rector was therefore arbitrary, as the University had inferred from her wearing a wig that it had been done with a religious purpose. The author asserted that she had been discriminated against regarding her right to education, as she had succeeded in passing the Student Selection and Placement Examination but had then been denied access to university on the sole ground that her hair had not been visible.

2.5 On 20 February 2007, the Second Administrative Court of Gaziantep dismissed the author's request for a stay of execution. On 16 April 2007, the author submitted to the same Court additional arguments regarding her complaint, stating that she had not received a copy of the documents presented by the University in its defence, in breach of her right to a fair trial. She argued that newspaper clippings provided by the University contained a photograph of her wearing a headscarf taken the day following her attempt to register at the University, and that her appearance in the photograph did not match the way she looked when she had presented herself at the University. The author also argued that, pursuant to articles 13 and 42 of the Constitution, a fundamental right such as the right to education could only be restricted by law.

2.6 On 7 December 2007, the Second Administrative Court of Gaziantep dismissed the author's complaint. It referred to the Constitutional Court judgment of 9 April 1991 interpreting transitional section 17 of the Higher Education Act (Law No. 2547), in which the Constitutional Court had stated that "in institutions of higher education, it is contrary to the principles of secularism and equality for the neck and hair to be covered with a veil or headscarf on grounds of religious conviction".[1]

2.7 On 14 March 2008, the author filed an appeal with the Council of State. She argued that the Second Administrative Court of Gaziantep had made an error on the facts, as the Court's decision mentioned her wearing a headscarf during her application for registration,

[1] According to the author, before 1991 there was no clear ban on the headscarf in higher education institutions in the State party. Section 17 of Law No. 2547 came into force on 25 October 1990. It provides that "choice of dress should be free in institutions of higher education, provided that it does not contravene the laws in force". On 31 July 1991, the Constitutional Court decided that the provision was constitutional, but ruled that covering one's neck and hair with the headscarf for religious purposes should not be regarded as protected, as it ran contrary to the principle of secularism embodied in the Constitution. According to the author, the strict ban on headscarves was put into place from 1997 on, through circulars issued by the Higher Education Council and addressed to university rectors, resulting in a de facto ban on headscarves in universities without any formal statutory provision.

whereas she had not worn a headscarf but a wig. The author also pointed out that the Court had inferred from her wearing a wig that she had intended to circumvent the principle of secularism, although she had never actually expressed such an intention, and that the decision to refuse her registration should therefore be considered arbitrary. The author argued that her rights to education, freedom of expression, religious freedom and respect for private life, protected under the Covenant and the Convention on the Elimination of All Forms of Discrimination against Women, had been violated.

2.8 On 20 April 2011, the author received notification that, on 2 March 2011, the Eighth Department of the State Council had dismissed her appeal without further justification. According to article 155 (1) of the 1982 Turkish Constitution, the Council of State is the last instance for reviewing decisions and judgments of administrative courts.

The complaint

3.1 The author claims that the State party has violated her rights under articles 2, 3, 14, 18, 25 and 26 of the Covenant.

3.2 As regards article 18 of the Covenant, the author claims that the interference with her right to freedom of religion was not prescribed by law, as no statutory provision formally bans the headscarf in the State party. The author argues that no specific meaning can be associated with wearing a wig, but that the University and domestic courts nevertheless inferred that she had a religious and even a political purpose. She stressed that she was not trying to challenge secularism in the State party, nor was she trying to advance any claim through covering her hair. Prohibiting her from registering at university cannot be seen as a measure pursuing a legitimate aim within the meaning of article 18, as wearing a wig cannot be considered as posing a threat to public safety, health, order, or morals, and she cannot be accused of infringing the rights of third parties, as her appearance with her wig is completely natural.

3.3 The author claims that the State party discriminated against her on the basis of her gender and her religion. She argues that, despite having passed the same examination as male students holding similar religious beliefs, she was not even allowed to enter the University for five years. As there was no alternative way for her to receive higher education, she had to stay at home. The author points out that the ban on headscarves disproportionately falls on Muslim women and results in inequalities in terms of access to education, employment and participation in public life.[2] She also claims that the courts are ineffective in protecting women wearing a headscarf from discrimination, because they are influenced by the Government and the military, and rely on the jurisprudence of the Constitutional Court. The author alleges that the State party breached articles 2, 3, 25 and 26 of the Covenant.

3.4 The author contends that the State party breached article 14 of the Covenant. She argues that the addenda filed by the University with the Second Administrative Court of Gaziantep as evidence were not transmitted to her prior to the hearing, in breach of her right to defend herself. She also claims that the courts did not respond to her claims that her rights under the Covenant had been violated, and that the length of the proceedings had exceeded a reasonable period of time, as the Council of State took five years to decide on her appeal.

[2] The author indicates that a poll conducted on 12 March 2007 by the Milliyet Gazette/Konda Research Centre shows that 69.4 per cent of women in Turkey usually cover their heads when outside their home. According to this study, out of the 22 million Turkish women over the age of 17, some 14 million cover their heads outside of the home. She refers to a study "A Covered Reality of Turkey" (Istanbul, Hazar, 2007) according to which 70.8 per cent of women who had to remove their headscarf because they were afraid of losing their rights felt that their "personality" had been injured, and 63.2 per cent felt insulted. The author also provides examples of women being discriminated against in employment because of wearing a headscarf. According to the same study, 20.8 per cent of women could not find work with their head covered, 17.8 per cent of women were forced to stay in the background in the workplace because of their headscarf and 17.1 per cent had to perform jobs different from their profession if they wished to wear a headscarf to work.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 20 January 2014, the State party submitted its observations on the communication, specifying the facts of the case and the relevant constitutional provisions. The State party submits that the University refused the author's registration in accordance with legal provisions in force and the rulings of the Constitutional Court, which have a binding effect. The registration officer asked the author to comply with the dress and appearance regulations in force and to remove the wig she was wearing for religious purposes. As she refused to do so, her request to register was denied. Compliance with the national dress and appearance legislation established on the basis of higher court judgments was listed in the "Requirements for registration" section of the 2006 Handbook of Student Selection and Placement, Higher Education Programmes and Quotas. The lawfulness of that administrative regulation was confirmed by the Second Administrative Court of Gaziantep in its decision of 7 December 2007. The Court found that the dress and appearance regulations adopted by the higher educational institutions in accordance with Law No. 2547 were obligatory.

4.2 The State party submits that Law No. 2547 was amended on 25 February 2011 and 12 July 2012. According to the new provisions, students who have left higher educational institutions of their own accord, students dismissed for any reason except for committing terrorism-related crimes and students who did not register upon receiving the right to be enrolled in a higher educational establishment are entitled to submit an application to the institution in question and continue their education in the following academic year. Pursuant to these amendments, the author is entitled to be enrolled and continue her education at Kahramanmaraş Sütçü İmam University if she lodges an application with the University administration. The State party submits that there has been no violation of the author's rights. The State party further asserts that, even if there has been a violation, the author now has the right to request in-kind restitution, and was notified in writing by the University administration of this possibility in a letter dated 19 September 2013. In this light, the State party concludes that the communication should be declared inadmissible, as the author's claims no longer have a legal basis following the legislative changes in question.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 27 February 2014, the author submitted that, despite the legislative amendments referred to by the State party, her rights, violated in 2006 by the University's refusal to register her, could not possibly be restored. If she had been duly registered, she would have graduated in 2011 and, given her history of academic achievement and her good command of the English language, by now she would have been working in a financial institution. Moreover, the legislative amendments mentioned by the State party cannot guarantee that she would not be subject to a similar violation in the future if she started her university education. The author claims that there are no clear legal provisions banning headscarves, and that the practice has changed repeatedly over the years. She provides concrete examples demonstrating that the ban on headscarves was practised in 1987, was not enforced from 1988 to 1997, and then began to be enforced again starting in 1997. As of 2014, there has been a de facto lifting of the ban on headscarves, but without any legal provisions to prevent its re-imposition in the future. The author further claims that the amendments to Law No. 2547 introduced by Law No. 6111 and Law No. 6353, mentioned by the State party, concern general student amnesty and not the issue of headscarves, and therefore do not remedy the treatment she suffered. She adds that, having lost eight years since she first attempted to matriculate at university, she is no longer able to enrol in a higher educational establishment and will remain a high school graduate.

5.2 The author submits that the Second Administrative Court of Gaziantep did not take into consideration the fact that she was not wearing a headscarf but a wig, and states that the judges were not willing to find a violation in similar cases out of fear of repercussions.

5.3 The author responds to the State party's reliance on the Constitution, stating that she was discriminated against on the ground of her religious belief, contrary to article 10 of the Constitution, because she covers her hair. Because she covers her hair, she was barred from studying, unlike others who had passed the same entry exam. Moreover, her right to privacy

under article 20 of the Constitution was violated by the ban on headscarves enforced in the country. She also claims that her right to freedom of religion under article 24 of the Constitution was violated by the ban on headscarves worn out of religious belief, noting that such a ban does not apply to people wearing headscarves if they have cancer or are bald. The author further claims that her right to freedom of thought and opinion under article 25 of the Constitution was violated because she was not allowed to enter the University premises and her father had to talk to the administration on her behalf, and her right to education under article 42 of the Constitution was violated because she was not allowed to study. She claims that the restriction on wearing headscarves in the Handbook of Student Selection and Placement, Higher Education Programmes and Quotas did not comply with the Constitution and the Law on Higher Education.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the author's claim that all available domestic remedies have been exhausted. In the absence of any objection by the State party in this regard, the Committee considers that it is not precluded by article 5 (2) (b) from considering the present communication.

6.4 The Committee notes the State party's claim that the author does not presently have victim status because the 2011 amendments to Law No. 2547 allowed her to enrol in university and to request in-kind restitution, and she was notified in 2013 of this possibility. The Committee also notes that the State party does not clarify the meaning or content of the "in-kind" restitution. It further notes the author's response that, between her first attempt to matriculate in 2006 and her notification in 2013 that she had a new opportunity to do so, she lost eight years of opportunity to enrol in university and to enjoy the economic and employment benefits resulting from a university education, and that it is now no longer possible for her to pursue university studies. The Committee notes that even if the author eventually received the opportunity to enrol, this does not address the substance of the author's complaint, namely the denial of registration in 2006 because her hair was covered for religious purposes and the resulting harms she experienced. The Committee also notes that the harm caused to the author has not been compensated. Accordingly, the Committee considers that the author remains a victim in the meaning of articles 1 and 2 of the Optional Protocol.

6.5 The Committee notes the author's claim that her rights under article 2 of the Covenant have been violated because the domestic courts were acting under political influence. The Committee recalls that article 2 of the Covenant, which lays down general obligations for States parties, can be invoked by individuals only in conjunction with other articles of the Covenant, and cannot, in and of itself, give rise to a claim under the Optional Protocol.[3] The Committee thus finds this part of the communication inadmissible under article 3 of the Optional Protocol.

6.6 With respect to the author's claim under article 14 of the Covenant, the Committee notes that the author does not present sufficient details concerning the alleged failure of the Second Administrative Court of Gaziantep to forward to her the appendices submitted to the Court by the University in its defence or concerning her claim that the courts were ineffective in protecting her rights because they were under political influence. The

[3] See *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5; and *A.W.K. v. New Zealand* (CCPR/C/112/D/1998/2010), para. 9.4.

Committee therefore declares this part of the communication insufficiently substantiated and inadmissible under article 2 of the Optional Protocol.

6.7 The Committee notes that the author has not provided sufficient details to support her claim under article 25 of the Covenant. In the absence of any further information or explanations on file, the Committee declares this part of the communication insufficiently substantiated and inadmissible under article 2 of the Optional Protocol.

6.8 The Committee considers that the author has sufficiently substantiated the remaining claims under articles 3, 18 and 26 of the Covenant, for the purpose of admissibility. It therefore declares the communication admissible. Although the author appears to invoke article 3 of the Covenant separately, the Committee notes from the material on file that it should be considered in conjunction with article 18 of the Covenant and will therefore proceed with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's claim under article 18 of the Covenant that she was not allowed to register at and attend Kahramanmaraş Sütçü İmam University, to which she was duly admitted through the competitive examination process, because she was wearing a wig to cover her hair in place of a headscarf. The author claims that the authorities have thus imposed a restriction on her right to freedom of religion. The Committee notes the author's claim that the restriction in question was neither prescribed by law, nor necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, as stipulated in article 18 (3) of the Covenant.

7.3 The Committee recalls its general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, in which it held that the observance and practice of religion or belief may include, inter alia, the wearing of distinctive clothing or head coverings. The Committee observes that, although the author was wearing a wig and not a headscarf, she states that she did so to cover her hair in accordance with her religious beliefs. The Committee further notes the author's contention that the University inferred from her wearing a wig that it was done with a religious purpose, and that she was denied permission to register for religious reasons. The author further contends that such a ban does not apply to people wearing wigs if they have cancer or are bald. The State party does not refute these arguments. The Committee considers that, although a wig does not have a commonly acknowledged religious meaning or significance in the Muslim faith, the purpose for which the author used it, namely to cover her hair for religious purposes, and the reasons for the restriction, bring the present case under the ambit of article 18 (1) of the Covenant. It therefore considers that the denial of the author's registration at the University due to her wearing a wig in order to cover her hair for religious purposes constitutes a restriction of her right to manifest her religion.

7.4 Article 18 (3) of the Covenant permits restrictions on the freedom to manifest one's religion or belief only if such limitations are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. The Committee recalls its jurisprudence that article 18 (3) is to be strictly interpreted. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.[4]

7.5 In the present case, with respect to the requirement that a restriction be prescribed by law, the Committee notes the author's claim that neither wearing a wig nor wearing a headscarf was legally prohibited. The Committee also notes the State party's argument that the restriction on wearing headscarves in universities was set out in the 2006 Handbook of Student Selection and Placement, Higher Education Programmes and Quotas, based on Law

[4] See the Committee's general comment No. 22, para. 8.

No. 2547 as interpreted by the courts, and thus was established by law. The Committee need not resolve this issue, since restrictions on the rights enumerated in article 18 (1) must also comply with the other requirements of article 18 (3).

7.6 The Committee notes that the State party has not attempted to explain how the restriction on the manifestation of religion or beliefs satisfies the requirements of article 18 (3), that is, whether it served a legitimate aim of protecting public safety, order, health, or morals or the fundamental rights and freedoms of others, and how it was necessary and proportionate to such an aim. The Committee further notes that such a broad restriction, without a clear justification of its purpose, disproportionately affected the author, who lost the opportunity to pursue her university studies. In these circumstances, the Committee considers that the facts as presented reveal a violation of the author's rights under article 18 of the Covenant.

7.7 The Committee notes the author's claim under articles 3 and 26 of the Covenant that the restriction placed by the University on covering the head for religious purposes was discriminatory on grounds of religion and gender because it disproportionately affected her as a Muslim woman who chose to cover her hair in the exercise of her religious belief. The Committee notes the author's submission that the restriction on covering the head in a university would be relevant to many Muslim female students in the country and, as a result of this restriction, women who cover their hair in line with their religious belief could effectively be prevented from pursuing a higher education in a university, like the author.

7.8 The Committee recalls that regulations that govern the clothing to be worn by women in public may violate a number of rights guaranteed by the Covenant, including non-discrimination.[5] The Committee further notes that the State party did not explain how the restriction in question was based on reasonable and objective criteria, in pursuit of an aim that is legitimate under the Covenant.[6] The Committee concludes that the restriction on covering the head in a university constituted a form of intersectional discrimination against the author as a Muslim woman who chose to cover her hair, and thus violated article 26 and article 3, in conjunction with article 18, of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of articles 18 and 26, and of article 3 read in conjunction with article 18, of the Covenant.

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide individuals whose Covenant rights have been violated with an effective remedy. Accordingly, the State party is obligated to, inter alia, provide Ms. Türkan with adequate compensation, including as a result of her lost employment opportunities, and to ensure that she is afforded full opportunity to pursue her higher education studies, should she seek it. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.

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[5] See the Committee's general comment No. 28 (2000) on the equality of rights between men and women, para. 13.

[6] See the Committee's general comment No. 18 (1989) on non-discrimination, para. 13; and *G. v. Australia* (CCPR/C/119/D/2172/2012), para. 7.12.